IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

CIVIL APPLICATION NO.2886 OF 2004.

IN

FIRST APPEAL NO.831 OF 1989.

Vahazul Haq Esmidar Khan : Applicant

versus

Mariyambee Shaukat Ali & ors. : Respondents.

Mr.R.M.Pandey i/by Mr.R.P.Singh for the applicant.

Mr.A.R.Shaikh for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 05th September 2005.

ORAL ORDER

1. This application is filed by a person who is not a party to the Appeal No.831 of 1989 and Appeal No.970 of 1989. He claims that there was a partnership between him and original defendant

No.1. He was not aware about the suit filed by the plaintiff against original defendant No.1 though the suit came to be filed in 1964. A receiver came to be appointed in 1965. But according to this applicant, he learnt about the Receiver some time in 2002 and he filed a suit in 2004 before the City Civil Court for a declaration that he should not be dispossessed from the property. This is his application for permitting him to join the Receiver as a party defendant to that Suit No.2324/04.

2. The advocate for the original plaintiff and original defendant No.1 have strongly objected this application on the ground that it is inconceivable that when the receiver came to be appointed in 1965, the present applicant, who claims to be in possession and on the spot did not get any knowledge about appointment of receiver or activities of the receiver from 1965 to 2002 or 2004 when the aforesaid suit came to be filed by this applicant. They also contended that the Receiver in his report has shown this applicant as encroacher in 1984. They contended that when the receiver took possession of the property pursuant to the order of the Court, a

notice board was affixed to the property, that gives knowledge to everybody and, therefore, the applicant cannot be permitted to join Court Receiver because that will give leverage to him to claim further relief.

3. It is difficult to believe that a person in possession could not know about the receiver for 30 long years. Whether the receiver took possession rightly or wrongly; whether the applicant was in possession since 1964 or whether he was an encroacher or trespasser subsequent to the appointment of court receiver are the facts which can be ascertained or proved by calling necessary records from the receiver or by examining the court receiver in the suit of the applicant. No case is made out for granting such leave. Hence the application is rejected.

[D.G.DESHPANDE,J]